point that the P. 2340 was not large enough to hold 80,000 nuts, and he pointed out that plaintiff could have sent his coconuts to Rangoon in a ship which left Penang for that port on *October 29th, 1947* at a freight of $2 per bag whereas plaintiff apparently estimated his cost of transport in the P. 2340 at more than that. The plaintiff stated that he did not make inquiries about sending his nuts by steamer because he had hoped to make a profit bringing goods from Rangoon on the return trip and he had already hired the motor-boat. He had also paid $3,000 in advance.

I am forced to the conclusion that the plaintiff was totally unfit to carry out the project upon which he embarked (as "rather a gamble"), and I do not think he has proved that he is entitled to any substantial damages. No figures have been put before me on which I can exercise any legal basis of assessment of damages, and I do not think it would be right for me to make a pure "shot" or "guess". It appears even possible that he would have actually lost if the trip had been carried out, but that, again, is mere guesswork. I find myself in much the same position as was Jelf J. in *Sapwell v. Bass*[1]. That case, though quite different in its facts, was an action for damages for breach of contract, and the learned Judge, being quite unable to assess damages on any legal basis, gave judgment for the plaintiff for nominal damages of 1 shilling.

In the present case I feel myself in a somewhat similar position, and accordingly I give judgment for the plaintiff for nominal damages of $1.

Lastly the question of costs arises. The plaintiff has sued for damages for breach of contract but has failed to prove any substantial damages. In some cases I should in such event feel inclined to award to defendants their costs but in this case they have failed on the other issues (which took up a great deal of time in Court) and have only succeeded on the damages question. They have alleged but not proved fraud on the part of the plaintiff and want of ostensible authority on the part of their own agent. The defendant firm from 22nd October, 1947 have had, as stated above, very active disagreements and internal troubles amongst themselves, and it is largely, if not entirely, because of those that this action arose. I am of opinion that this case is governed as regards costs by considerations similar to those in *Sapwell v. Bass*[1], cited above.

I think therefore that justice will be done in the peculiar circumstances of this case by ordering each party to pay his own costs.

Order accordingly.

CHOW E WA (f) v. REGISTRAR OF TITLES & ORS.

[C. A. (Willan C.J., Spenser Wilkinson and Storr JJ.) December 23, 1948]

[K. L. — F.M. Civil Appeal No. 39 of 1948]

Land Code (Cap 138), ss. 78, 174, 175 and 283 — Order of Court — Whether registering authority has discretion to register Order of Court — Time and date of memorial — Interpretation by reference to foreign law.

The question raised in this appeal was whether the Registrar of Titles has a discretion to refuse to register an Order of Court giving extension of time to a caveat, after Registrar of Titles had made a memorial on register discharging the caveat.

Held: s. 174 of the Land Code gave the proper registering authority no option and that in this case the Registrar of Titles should have registered the Order of Court and if, after registering it, he was doubtful as to its effect, he should have referred the question to a Court for a ruling.

In view of section 78 of the Land Code all orders of Court should be noted on the presentation book, otherwise there is no record of the time and date when they were presented. To ignore the provision of that section with regard to orders of Court might lead to grave difficulties if an order of Court and a charge of transfer were presented on the same day at about the same time.

To attempt to construe the local Land Code by reference to decisions under a foreign land law which is not in *pari materia* with our local Land Code, is dangerous, not only because we do not know in what respects the other laws of the foreign country — e.g. their Interpretation Act — may differ from our local law.

Cases referred to :—

(1) *Collector of Land Revenue v. Chong Loke Chong & Anor.* 3 F.M.S.L.R. 60.

(2) *In re the Registration of Caveat* (1908) Innes 114.

(3) *Loke Yew v. The Port Swettenham Rubber Co.* (1912) Innes 202 at p. 212 — 213.

(4) *Collector of Land Revenue v. Tan Toh & Anor.* (1933-34) F.M.S.L.R. 135.

(5) *Thiagaraja Bhagavathar v. King-Emperor* 74 I.A. 132 at p. 141.

CIVIL APPEAL.

R. Ramani for the appellant.

E. N. Griffith-Jones for the Registrar of Titles, Selangor (1st respondent).

C. Mills for the Hongkong and Shanghai Banking Corporation (2nd respondent).

W. G. W. Hastings for Loke Yong Hong (3rd respondent).

The judgment of the Court below was as follows :—

Briggs J. : —This is a reference by the Registrar of Titles, Selangor, under section 238 of the Land Code. Chow E Wa (f) is the proprietress of the land held under Selangor Grant for Land No. 703 and Selangor Certificate of Title No. 1801. On the 12th June, 1948, an absolute caveat was lodged against this land by Loke Yung Hong, who claimed that the

proprietress held the land as trustee for him. The address of the proprietress was not at that time known to the caveator and it was not possible to serve notice on her in the ordinary way; but the caveat came to her notice on the 8th July and on the 9th July she applied for its removal under section 171 of the Land Code. On the 19th July the Registrar of Titles issued notice in the form in Schedule XXXVII and this was served on the caveator on the 5th August. On the 18th August the caveator filed an application (Civil Application No. 38 of 1948 — *Loke Yung Hong v. Chow E Wa*) asking that an order be made for extension of time under section 172. The application was that the time be extended in the first place for 21 days and that, if within such time the applicant should have filed a suit in the Supreme Court to establish his claim as *cestui-que-trust,* time should be further extended until final order in such suit or until further order of the Court. On the 23rd August the Chief Justice made an order extending the time up to and including 16th September, 1948, but no further. This order was served on the Registrar of Titles on the 24th August, i.e. two days before the original period of 21 days mentioned in the Registrar's notice would have expired. On the 15th September the caveator filed a suit in the Supreme Court (Civil Suit No. 101 of 1948) to establish his rights as *cestui-que-trust.* On the 16th September he filed a further summons and affidavit in Civil Application No. 38 of 1948 asking for further extension of time under section 172. These proceedings were not served on the Registrar of Titles and he had no knowledge of them. On the 16th September one Chan Yuet Seong (f) lodged a second caveat alleging that she had a beneficial interest in Grant No. 703 and Certificate of Title No. 1801. This claim must have been adverse to the claim of the caveator Loke Yung Hong, who claimed to be solely beneficially entitled. On the 17th September the Registrar of Titles made an endorsement on the caveat of Loke Yung Hong that it was "discharged under section 171 (i) Land Code, Cap. 138, this 17th day of September, 1948, vide RT/Sel. 41/48," and made memorials on the register documents of title accordingly. On the 20th September the application for extension of time came before Mr. Justice Russell in Chambers. Counsel appeared for both the caveator and the proprietress. Neither of them was aware at that time that the caveat had been noted as discharged. The Court made an order that "the time mentioned in the Notice to Caveator .... be and is hereby further extended until judgment in Civil Suit No. 101 of 1948 or until further order of the Court." The order was not a consent order; but it was made without objection of the part of counsel for the proprietress. It is worth noting that the Assistant Registrar's minute is in the following form :—

20.9.48 Cor: Russell J. (In Ch.)
Hastings for Applt.
Ramani for Respt.
Caveat to remain until the determination of the suit or any other order of Court.
P. Samuel.

The learned Judge on making this order was aware that the extended time granted by the order of the 23rd August had already expired, but was not aware that the caveat had been noted as discharged by the Registrar of Titles. On the 24th September the order was served on the Registrar of Titles. In view of his having already made a memorial on the titles that the caveat was discharged, the Registrar of Titles took the view that the order was a nullity, or was ineffective to revive the caveat, and he accordingly refused to register it. On the 28th September he wrote to the caveator's solicitors accordingly and sent copies to the proprietress's solicitors and to the Registrar, Supreme Court. The caveator's solicitors replied on the 29th September that in accordance with section 174 of the Land Code the order must be registered. They stated in the letter that the order was made by consent; but this was either incorrect or loose language, and the contention was later abandoned. On the 14th October the Registrar of Titles advised the caveator's solicitors by letter that they should seek further directions from the Court. On the 22nd October the caveator's solicitors applied to the Registrar of Titles for his grounds of decision under section 237 (i). On the 23rd October the caveat of Chan Yuet Seong was removed after notice under section 171 (i), and on the same day a charge was executed by the proprietress over Certificate of Title No. 1801 in favour of the Hongkong & Shanghai Banking Corporation, and was presented by their solicitors for registration. The Registrar of Titles was of opinion that, notwithstanding the order of Court dated the 24th September, 1948, the caveat of Loke Yung Hong was for all purposes discharged and that there was therefore no lawful prohibition, within the meaning of section 89 of the Land Code, against the registration of the bank's charge. Being, however, in doubt whether, having notice of the order of Court, he might be held in contempt if he registered the charge, he sought the directions of the Court as to his appropriate course of action by reference under section 238. The reference was filed on the 3rd November, and the Registrar issued his grounds of decision under section 237 (i) on the same day. A copy is annexed to the reference. The proprietress, Chow E Wa, the proposed chargee, the Hongkong & Shanghai Bank, and the caveator, Loke Yung Hong, were given notice of the proceedings and all appeared. It appears from documents put in on the hearing of the reference that

the proprietress had been in negotiation with the bank for a loan, to be secured by charge, since June, and that the charge was prepared in that month. The bank's solicitors then discovered the existence of the caveat of Loke Yung Hong and informed the proprietress's solicitors of it. It appears also that on the 20th August the proprietress's solicitors wrote to the caveator's solicitors pointing out to them the necessity for extending the caveat and suggesting that a suit should be filed before the 26th August, being the date mentioned in the notice to the caveator. On the 21st August, a reply was sent that a summons in chambers had been taken out to extend time and that, as "efforts at a settlement" were being made, it seemed unnecessary at that time to file a plaint. Presumably the negotiations for settlement broke down between then and the 15th September.

There appears to be little authority on the particular point raised in this reference. Mr. Griffith-Jones for the Registrar of Titles relied on a passage in *Thom* on *The Canadian Torrens System* (1912 Edition p. 378) which states :—

> The filing of the judge's order continuing the caveat within the thirty days is a requisite for the validity of such order, and an order received after the expiration of the time will not be registered.

The author quotes, in support, a case heard by the Master of Titles, Saskatchewan, which is not available. The passage continues :—

> In Manitoba, pursuant to the statute (Sec. 137), proceedings may apparently be taken under the caveat at any time after the expiration of the time limit, but before the District Registrar shall have disposed of the caveat as lapsed.

In Saskatchewan the relevant sections are :—

> 136. (1) .....
>
> (2) Except in the case of caveats under an Act respecting Homesteads, being chapter 29 of the statutes of 1915, and caveats filed by the registrar, the owner or other person claiming an interest in the land may require the registrar, by notice in writing (form AA), to notify the caveator, at his address for service as set forth in the caveat, that such caveat shall lapse at the expiration of thirty days from the mailing of the notice by the registrar, unless in the meantime the caveator shall file with the registrar a judge's order providing for the caveat continuing beyond the said thirty days. The notice from the registrar shall be given by registered letter.
>
> (3) If such order is not filed with the registrar within the time limited by the notice, the caveat shall lapse. If such order is filed within the time so limited, the caveat shall lapse at the expiration of the extended period named in the order, unless a further order continuing the caveat is in the meantime filed with the registrar.
>
> (4) .....
>
> 138. (1) A memorandum shall be made by the registrar upon the certificate of title and upon the duplicate certificate of the withdrawal, lapse, or removal of any caveat, or of any order made by the court or a judge in connexion therewith.
>
> (2) After such withdrawal, lapse or removal, it shall not be lawful for the same person, or for any one on his behalf, to register a further caveat in relation to the same matter, unless by leave of a judge.

It will be seen that :—

(1) there is express provisions for lapse of the caveat on expiration of the extension of time given by the Court, while here that is a matter of implication.

(2) there is express provision that the Court may extend time on more than one occasion, while here there is no such provision (although the Court has often done so).

(3) there is express provision that the Court may give leave to impose a second caveat when one has lapsed, while here there is no such provision.

This last difference is sufficient to make it clear that in Saskatchewan no inconvenience need arise from the rule that an order of Court filed out of time will not be registered. The rule may also be justified by the words "in connexion therewith" at the end of section 138(1). If a caveat has ceased to exist, it is doubtful if an order can be made "in connexion therewith."

The statement about that Manitoba statute apparently refers to the repealed Act of 1902. Under the 1913 statute the relevant section is section 145 which reads :—

> Notwithstanding anything in this Act contained a caveator may take proceedings under his caveat at any time after the expiration of the time limited by the preceding sections for so doing, provided he shall do so and furnish evidence thereof to the district registrar before he shall have disposed of the caveat so lapsed.

Mr. Ramani for the proprietress cited *Hogg on Registration of Title to Land throughout the Empire* (page 58) and *Carr on The Australian Land Titles System* (page 494, paragraph 1,111). The passage in *Hogg* occurs in the chapter on initial registration, where it is important to reach finality as soon as possible. A footnote draws attention to the distinction. I do not think that any of these authorities are of much assistance in this case. They do, however, show that there is nothing revolutionary in the conception of the Court imposing a new caveat to protect an interest formerly protected by a caveat which has lapsed. Many systems allow more than one caveat : it is not inherently unreasonable to suggest that the Land Code may do so. The statutory provisions in different jurisdictions differ widely, and I think the safest course is a direct attempt to construe the local satute and to find its meaning from its wording alone.

I think the question what the Registrar of Titles should do must be answered by stages. The first question is whether he should have registered the order of Court dated 20th September, 1948. On this I think the wording of section 174 is explicit and absolutely mandatory. If the Court makes, or purports to make, an order relating to a caveat within the meaning of section 174, the registering authority must make the appropriate memorial, whether or not

the order of Court was rightly made. There is no local authority which states in terms that a caveat which has lapsed cannot be revived. It is true that under section 175 a caveator whose caveat has been discharged cannot present a further caveat in relation to the same matter; but there is nothing to indicate that the Court cannot order a caveat to be imposed to protect his interest. It may well be proper to forbid an individual to make a nuisance of himself by presenting a series of caveats in support of a single invalid claim; but that is a very different matter from saying that, if a caveat has lapsed and been discharged, the Court cannot, in a proper case, revive or renew it. I should have to be satisfied beyond question that the Court had acted without jurisdiction, before I could accept the submission made on behalf of the Registrar of Titles that he was entitled to refuse to register an order of Court of this kind. I think he has no such discretion. The policy of the Land Code is that High Court has general control over the acts of the registering authority. If the Registrar of Titles is allowed to say that an order of Court is a nullity or ineffective or wrongly made, and thereupon to refuse to register it, this policy is reversed and the registering authority would sit, as it were, in appeal from the High Court. The Registrar of Titles should have made a memorial of the order of Court dated 20th September, 1948, in terms of section 174 when it was served on him. If, after registering the order, he was doubtful as to its effect, he could have had that question settled by a reference to the Court.

In so holding, I am not disregarding the words "unless he shall have been previously served with an order .... "in section 171(i). I consider that the Registrar of Titles acted perfectly properly in discharging the caveat on 17th September. It had then lapsed and had ceased to be effective, and at any time between the 17th and the 24th September he would have been obliged, had it not been for the caveat of Chan Yuet Seong, to register any transaction. Any transferee or charge who had taken for value a registered interest in the land at that time, even with notice of the equitable rights (or claims) of Loke Yung Hong, would have taken free of all equities: but there was no such transaction, and could not have been any, since Chan Yuet Seong's caveat was in force. It seems quite possible that the passages in *Thom* deal only with priorities where another document has been properly presented for registration before the order is filed.

Assuming registration of the order of Court, what effect would it have? There are two possibilities; either it operated to revive, renew or continue the caveat, or it was completely ineffective I deliberately use the phrase "revive, renew or continue", because it is not necessary to decide, and I shall not decide, whether the strict effect in law would be (a) that the discharge was nullified and the old caveat is deemed to have been continuously in force, or (b) that the old caveat, though it died on the 17th September, was restored to life on the 24th, or (c) that it is now transformed into a new caveat by the Court's order. Any of these events would have the same practical results in the circumstances of this case. If, however, the order was completely ineffective, the Registrar of Titles would be obliged now to register the bank's charge, since there would be no "lawful prohibition" within the meaning of section 89. I must therefore decide whether the order of Court was effective to revive, renew or continue the caveat.

If there were no power in the Court to do this after discharge, extremely incovenient consequences would follow. The Land Code makes no provision for registration of an injunction or a *lis pendens*. A caveat has to do the work of all. A caveator whose rights were uncontestable would be unable to protect them in any effective way, although his failure to obtain an extension of time might be due to unavoidable accident, or even to his inability to obtain a date for the hearing of his application. Mr. Ramani for the proprietress submitted that, inconvenient as it might be, this was the effect of the law. I do not agree. The Court has wide powers under the Land Code to order, where no other registered or registrable claim intervenes, that the register be brought into conformity with the requirements of justice as between the parties. The powers given by section 240 are not, in my view, limited to ordering changes in the register necessitated by a final determination of all the rights of the parties *inter se*. If the Court, at an interim stage in any proceedings, decides that the *status quo* should be maintained as between the parties, I think that, where a caveat has lapsed, the Court would have power to order its revival under section 240, even if there were no longer any jurisdiction under section 172. The case of *The Collector of Land Revenue Tapah v. Chong Loke Chong & Anor.*[1] was mentioned, though not cited, as being an authority against that view. It deals with section 76 of the F.M.S. Registration of Titles Enactment, 1911, which for this purpose was in *pari materia* with section 240 of the Land Code, and decides that section 76 is not to be used to originate proceedings, and that in any case an originating summons is not an apt procedure in cases where the facts are in dispute. The Chief Judicial Commissioner (Sir Lionel Woodward) in his judgment said :—

> The Collector of Land Revenue, Tapah, applied by Summons in Chambers, on the 5th May last for an order on the Registrar of Titles to rectify the register.
>
> The summons purported to be under s. 76 of the Registration of Titles Enactment.

That was certainly wrong. I have had occasion before now, during the years when I was in Ipoh, to point out that this section is not intended to be used for originating proceedings. But where in proceedings already before it the Court has arrived at certain conclusions affecting the register, the section enables it to give full effect to those conclusions, by ordering the register to be amended in accordance with them.

The last sentence appears to me to accord entirely with the view which I have expressed above. There are here pending proceedings, and in them the Court has decided that, as between the parties, the *status quo* on the register should be preserved until the trial by forbidding the registration of any transactions. That can be done, without interferring with any other person's rights, by reviving, renewing or continuing the caveat. I think, therefore, that there was jurisdiction to make an order to revive, renew or continue it. I have not the slightest doubt that the learned Judge intended that the *status quo* should be preserved in the way described. He knew that the caveat had lapsed, even if he did not know of the memorial made to that effect. The wording of the order is perhaps not so apt as it might be; but orders of Court in Land Code matters are not confined to the prescribed forms applicable to other Land Code documents. The intention of the order is clear and I think that is all that matters. Whether the learned Judge was right in the circumstances in ordering that the caveat be revived, renewed or continued is, as Mr. Hastings for the caveator points out, immaterial. The order, even if wrong, was not a nullity and cannot be treated as such by the Registrar of Titles. If it was wrong, it could have been set aside on appeal.

It may be conceded that the practice of conveyancers in this country appears to be based on the assumption that, once a caveat has lapsed, nothing more can be done. I know of no case where the Court has been asked to revive, renew or continue a lapsed caveat, and it may be thought that, if there is power to do so, such applications would have been made. On the other hand, legal practitioners proceed on the basis of taking no unnecessary risks. In the absence of any reported decision that the power exists, they would normally take good care to make application within the safe period, rather than risk a late application which might be held incompetent or might be dismissed on the merits.

Mr. Griffith-Jones and Mr. Ramani both took the point that, when a caveat has been lodged and later removed, the proprietor has thereafter a vested right to a clear title, enabling and entitling him to disregard and override the equitable interest which the caveat was designed to protect. This appears to me quite incorrect. Mr. Justice Innes, in *In re the Registration of Caveat. Vol. VI Folio No. 46*[2] said:—

> . . . . The establishment of a system of Registration of Titles in these States does not preclude these Courts, nor as far as I am aware, the Courts of any British Colony where the system is in force, from taking cognizance of rights arising out of a covenant relating to registerable land the breach of which by the covenantor would connote a clear want of good faith on his part; and this view of the attitude of the Courts towards a right or interest of this kind does not conflict with the proposition that such a right or interest is always liable, according to circumstances, to be set aside in favour of the interest of a *bona fide* registered purchaser of the land or any other *bona fide* registered interest. The close analogy between injunctions and caveat has been pointed out by a well known writer on the Torrens system (Hogg), and it has been stated that the true principle which should govern the question whether an interest is caveatable or not would seem to be that a caveat may be entered in circumstances which would justify an injunction being granted by the Courts. . . . . .

The Privy Council has laid down in *Loke Yew v. The Port Swettenham Rubber Co.*[3] that:—

> . . . . So long as the rights of third parties are not implicated a wrong-doer cannot shelter himself under the registration as against the man who has suffered the wrong. Indeed the duty of the Court to rectify the Register in proper cases is all the more imperative because of the absoluteness of the effect of the registration if the Register be not rectified. . . . . It may be laid down as a principle of general application that, where the rights of third parties do not intervene, no person can better his position by doing that which it is not honest to do, ...

In this case the caveator claims to be the owner in equity of the land and has brought an action to establish his claim. No doubt the proprietress contests that claim; but it would be unconscionable on her part to attempt to dispose of the land, or any interest therein, during the pendency of the litigation. I do not think the situation which has arisen between the parties creates, or should create, any right in the proprietress to disregard the caveator's claim, and I think her conduct in charging, or attempting to charge, the land, with full knowledge of that claim, was immoral and ought not to be encouraged. The position of the intended chargees is quite different: they are not concerned in the relations between the caveat and the proprietress, and were entitled to disregard them and get on the register if they could.

Mr. Griffith-Jones argued that if this order of Court were upheld, it would amount to an attack on the integrity of the register. I cannot follow this argument. The Court will always give effect to equitable rights, so far as it can do so without interfering with the interests of a third party. Any rights of the bank in this case arose later in time than the rights of the caveator. There is no evidence, and it is highly improbable, that the bank has lent any money to the proprietress in expectation of registration of the charge. The only harm it will suffer will be that the bargain will go off, or its completion will be postponed. The due protection of equitable interests by caveat is just as much a part of the system of registration as the right of a third party to override such interests where no caveat exists. I see no danger underlying a

decision that a caveat may be revived if no transaction intervenes.

The order of Court of the 20th September, 1948, must be registered. It will then have the effect of reviving, renewing or continuing the caveat of Loke Yung Hong, which will prevent the registration of any transfer or charge until judgment in Civil Suit No: 101 of 1948 or until further order of the Court. Accordingly the charge over Certificate of Title No. 1801, dated 23rd October, 1948, cannot be registered. The original caveats (Exhibits B & C) are to be returned to the Registrar of Titles, Selangor, on his undertaking to produce them in the event of an appeal. Although there is jurisdiction to order payment of costs on a reference of this kind — see *Collector of Land Revenue, Klang v. Tan Toh & Anor.*[4] I make no order as to costs. The necessity for these proceedings sprang from the unexplained delay by the caveator in obtaining the order, rather than from any culpable act by the Registrar of Titles and, although the proprietress was interested to oppose and did oppose the caveator, she did not initiate the proceedings. I think therefore that this case forms an exception to the rule that costs should follow the event.

The proprietress (Chow E Wa) appealed.

COURT OF APPEAL, appeal from the judgment of Briggs J.

Willan C.J. (with whom **Spenser Wilkinson** and **Storr JJ.** agreed): — This is an appeal against the decision of Briggs J. on a reference to the Court by the Registrar of Titles, Selangor, under section 238 of the Land Code (Cap. 138).

The appellant is the registered owner of the land held under Selangor Grant No. 703 and Selangor Certificate of Title No. 1801 (hereinafter in this judgment referred to as "the lands"). On the 12th June, 1948, the third respondent lodged a caveat against the lands, claiming that the appellant held them in trust for him. On the 9th July, 1948, the appellant applied to have the caveat removed under section 171 of the Land Code, and the Registrar issued the usual notice in the form in Schedule XXXVII, which was served on the third respondent on the 5th August, 1948. On the 18th August, 1948, the third respondent filed an application in Court asking for an extension of the caveat under section 172 of the Land Code. The application was that the life of the caveat be extended in the first place for twenty-one days and that, if within such time the third respondent should have filed a suit in the High Court to establish his claim as *cestui-que-trust*, time should be further extended until final order in such suit or until further order of the Court. The application came before me on the 23rd of August, 1948, and on that date I made an order extending the time up to and including the 16th September, 1948, but no further. I did not make the order as prayed because no suit had then been filed and to have made the order sought would have made it incumbent on the Registrar to have made enquiries later as to whether in fact a suit had been filed. This appeared to me undesirable. This order was served on the Registrar of Titles on the 24th of August, 1948.

On the 15th of September, 1948, the third respondent filed a suit (Selangor Civil Suit No. 101 of 1948) in the High Court to establish his claim as *cestui-que-trust*. On the 16th of September, 1948, he filed another application asking for a further extension of the caveat until judgment in Civil Suit No. 101 of 1948 or until further order of Court. This application was not served on the Registrar of Titles and he had no knowledge of it. This is important because that application was heard by Russell J. on the 20th September, 1948, and the Registrar of Titles had already made a memorial on the register on the 17th of September, 1948, under section 174 of the Land Code, that the caveat had lapsed in view of the fact that the order made by me only continued it in force up to and including the 16th of September, 1948.

On the hearing of that application Mr. Hastings appeared for the third respondent (the applicant) and Mr. Ramani appeared for the appellant (the respondent on the application). The application was not opposed, as appears clear from the note made by Russell J., which reads :—

In Chambers. Monday, 20th September, 1948.
Cor: Russell J.
C.A. No. 38/48.
Application for extension of time. Hastings for Applicant. Ramani for Respondent. No objection.
Extension as prayed.

At the time he made that order Russell J. knew that extension of time granted by me prolonging the life of the caveat had expired but he was not aware that the Registrar of Titles had made a memorial on the register on the 17th September, 1948, discharging the caveat.

Neither Mr. Hastings nor Mr. Ramani, on the hearing of the application before Russell J., was aware that the caveat had been discharged — if they had searched the register they would have been aware of this — but both of them must have known that the time extending the life of the caveat had expired because the affidavit in support of the application states quite clearly that my order had only extended the caveat up to and including the 16th September, 1948. I mention this specifically because on the hearing of this appeal Mr. Ramani, for

the appellant, said he was not conscious that the caveat had expired on the 16th of September, 1948. In view of the clear statement in the affidavit already referred to, I can only say that he should have been conscious that it had expired. I ought to add that when Counsel for the appellant and Counsel for the third respondent, the respondent and applicant respectively on the application before Russell J. came to know a few days after the order of the 20th of September, 1948, was made, that the caveat had been discharged by the Registrar of Titles, neither of them brought this to the notice of Russell J.

That order of Russell J. was served on the Registrar of Titles on the 24th September, 1948. He refused to register it on the ground that he had already made a memorial that the caveat had been discharged.

Meanwhile, another caveat by a third party was lodged against the lands, and after the usual notice under section 171 of the Land Code, this caveat was eventually removed on 23rd October 1948. On that day a charge executed by the appellant in favour of the Hongkong and Shanghai Banking Corporation, in respect of one of the lands, was presented for registration, and since both the caveat of the third respondent and the second caveat of the third party just mentioned had been discharged, it appeared from the register on that date that there was no obstacle to prevent the charge from being registered. However, by letter dated the 29th September, 1948, the solicitors for the third respondent had informed the Registrar of Titles that by virtue of section 174 of the Land Code he had no option but to register the order made by Russell J. on the 20th September, 1948. On 3rd November 1948 the Registrar of Titles referred the matter to Court under section 238 of the Land Code. He drew attention to the order made by Russell J. on the 20th September, 1948, and asked if the Court could hold him in contempt if he registered the said charge, notwithstanding the existence of the said order of Court.

That reference came on for hearing before Briggs J. who refused to accept the argument made on behalf of the Registrar of Titles that he was entitled to refuse to register an order of Court of this kind. The learned Judge held that the policy of the Land Code is that the High Court has general control over the acts of the registering authority and to hold that the Registrar of Titles is allowed to decide that the order of Court is a nullity or ineffective or wrongly made, and thereupon to refuse to register it, would be contrary to that policy. He therefore held that on the wording of section 174 of the Land Code it is mandatory on the Registrar of Titles to register an order of Court and that if, after registering it, the Registrar is doubtful as to its effect, he should refer the question to Court for a ruling.

Having decided that the Regisrtar of Titles must register the order of Russell J. of the 20th September, 1948, Briggs J. held that the effect of so registering it would be to revive, renew or continue the caveat, and this would prevent the registration of any transfer or charge relating to the lands — particularly the charge presented on the 23rd October, 1948 — until judgment in Civil Suit No. 101 of 1948 or until further order of the Court.

The order, following the judgment of Briggs J. is as follow: —

This reference by the Registrar of Titles, Selangor, under section 238 of the Land Code coming on for hearing before the Honourable Mr. Justice F. A. Briggs in the presence of Mr. E. N. Griffiths Jones, Legal Adviser, Selangor, for the Registrar of Titles, Mr. Ramani for Chow E Wa (f) the proprietor of the land, Mr. C. Mills for the Hongkong & Shanghai Banking Corporation Limited the presentor of the charge, and Mr. W. G. W. Hastings, for Loke Yung Hong the caveator, on the 15th day of November, 1948, and the Court having taken time to consider its judgment.

And this reference coming on for judgment on the 20th day of November 1948, in the presence of Mr. J. V. M. Shields for the Registrar of Titles, Mr. R. Ramani for Chow E Wa (f) the proprietor of the land, Mr. C. Mills for the Hongkong & Shanghai Banking Corporation Limited the presentor of the charge, and Mr. W. G. W. Hastings for Loke Yung Hong the caveator.

IT IS ORDERED that the order of Court dated the 20th September, 1948, and made in Civil Application No. 38/48 be registered in accordance with the terms thereof.

AND IT IS DECLARED that such registration will have the effect of reviving, renewing or continuing the caveat of Loke Yung Hong until judgment in Civil Suit No. 101 of 1948 or until further order of this Court.

AND IT IS ORDERED AND DECLARED that the charge over Certificate of Title No. 1801 dated the 23rd October, 1948, cannot be registered during the subsistence of the said caveat.

AND IT IS ORDERED that the original caveats (Exhibits B and C in the Reference) be returned to the Registrar of Titles, Selangor, on his undertaking to produce them in Court in the event of an appeal.

Mr. Ramani, for the appellant, based his argument that the Registrar of Titles was right in refusing to register the order made by Russell J. on the 20th September, 1948, on the following main grounds:—

(a) Since the caveat had lapsed and a memorial had been made discharging it on the 17th September, 1948, section 175 of the Land Code prevented the caveator (3rd respondent) presenting a further caveat.

(b) That the Registrar of Titles is in certain respects a quasi-judicial officer and, in this particular case, he exercised his discretion judicially by refusing to register an order of Court, which in his opinion was wrong.

(c) That the order of Russell J. was made without jurisdiction.

With regard to (a), section 175 of the Land Code reads :—

"It shall not be lawful for the same person, or for anyone on his behalf or claiming through him, to present a further caveat in relation to the same matter, but nothing herein contained shall prejudice the right of the proper registering authority to present or continue any caveat under the powers vested in him by section 230."

In my view that section has nothing to do with orders of Court. Apart from the reference to caveats presented or continued by the Registrar of Titles in the latter part of the section, the first part of the section only prohibits persons mentioned in section 166 of the Land Code *themselves* presenting successive caveats. The third respondent presented an order of Court extending the life of a caveat to the Registrar of Titles for registration, and this is entirely different from presenting a caveat itself for registration.

Mr. Ramani referred to sections 133 to 139 (both inclusive) of the Land Code Act, 1917, of Saskatchewan, set out at pages 630 and 631 of *Hogg* on Registration of Titles Troughout the Empire, and compared them with sections 167 to 176 (both inclusive) of the Land Code. He, himself, pointed out certain differences between the two laws but still attempted to persuade us that in Saskatchewan the order of Russell J. would have been rejected by the appropriate registering authority, and therefore the Registrar of Titles, Selangor, was right in refusing to register it. This argument does not commend itself to me and contentions of this kind have been frowned on by the Privy Council. To attempt to construe the local Land Code by reference to decisions under the land law of Saskatchewan, which law, Mr. Ramani himself, admitted, is not in *pari materia* with our local Land Code, is dangerous, not only because the two laws are not identical but also because we do not know in what respects the other laws of Saskatchewan — e.g. their Interpretation Act — may differ from our local law. If authority is needed for this, it is to be found in the case of *Thiagaraja Bhagavathar v. King-Emperor*[5] where their Lordships of the Privy Council said :—

It is always dangerous to construe an Indian Act by reference to an English Act however closely the language of the two Acts may approximate.

With regard to (b) — i.e. that the Registrar of Titles is a quasi-judicial officer and therefore had the discretion to refuse to register the order of Russell J. — the clear and mandatory provisions of section 174 of the Land Code refute that argument. That section, in so far as it refers to orders of Court, reads :—

A memorial of any order made by the Court . . . . . shall be made upon the register document of title by the proper registering authority.

As Mr. Hastings, for the third respondent, concisely put it, the Registrar of Titles is not empowered to place himself in the position of a Court of Appeal with regard to orders of Court presented to him for registration.

That section gives the proper registering authority, in this case the Registrar of Titles, Selangor, no option. If he had any doubt as to how the order of Russell J. made on the 20th of September, 1948, should be registered, or as to its effect, he should have made a reference to the Court under section 238 of the Land Code. If he had done that immediately the order was presented to him, as he should have done since he had doubts, the reference to Court before Briggs J. would not have been complicated to the extent that an intending chargee had come forward.

With regard to (c) — i.e. the contention by Mr. Ramani that Russell J. had no jurisdiction to make the order — the question of whether he would have done so if he had known that the caveat had been discharged on the 17th September, 1948, is to my mind entirely immaterial. In that respect I agree with the contention of Mr. Hastings, for the third respondent. Russell J. clearly had jurisdiction to make the order in the sense that the parties were properly before him upon a matter in respect of which he had power to adjudicate and, in view of the mandatory provisions of section 174 of the Land Code, the Registrar of Titles had no authority to refuse to register it on presentation.

When the appellant discovered a few days after the order had been made that the caveat had already been discharged, she could have made an application for review of the order under section 579 of the Civil Procedure Code or she could have preferred an appeal against the order. She did neither and therefore has only herself to blame for this. In my view she chose to take advantage of the fact that although she had not objected to Russell J. making an order for an extension of the caveat she was able to turn to her own advantage the action of the Registrar in refusing to register the order. I mention this because the appellant has taken the course of waiting to appeal against an order of Court made on a reference by the Registrar of Titles, and complicated by the fact that a third party — an intending chargee — has come into existence, instead of taking the clear and simple method

of applying to review, or appealing against, the order made by Russell J. on the 20th September, 1948. It is not for me to speculate in this judgment what course the appellant would have taken if the Registrar of Titles had registered, as he should have done, the order of Russell J. — an order to which the appellant had not objected.

Mr. Griffith Jones, Legal Adviser, Selangor, for the first respondent, the Registrar of Titles, Selangor, and Mr. Mills, for the second respondent, the Hongkong and Shanghai Banking Corporation Limited, appeared on the hearing of this appeal and associated themselves with the arguments of Mr. Ramani, for the appellant, against the judgment of Briggs J.

I agree with the judgment of Briggs J., except that part of it which decides that the order of Russell J. has the effect of reviving, renewing or continuing the caveat. I do not think that his opinion in this respect was necessary to his decision upon the question asked in the Reference by the Registrar of Titles — i.e. whether the charge presented on the 23rd October 1948 ought to be registered. I content myself with deciding that once the memorial of Russell J.'s order had been made on the register document of title it had the effect of forbidding any instrument from being registered against the title until judgment in Civil Suit No. 101/1948 or until further order of Court. I would therefore vary the order of Briggs J. by deleting therefrom the first declaration therein.

One final matter which I ought to mention, though it is not necessary to decide in this appeal. It is that we were informed by Mr. Griffith Jones that it is not the practice for the Registrar of Titles, Selangor, to note any order of Court in the presentation book, when it is presented for registration.

Section 78 of the Land Code reads :—

> The proper registering authority in making a memorial in the Register or a reference on an instrument shall take the time and date in the presentation book as the time and date of registration.

That section is not restricted to "instruments" mentioned in the Land Code — I do not consider that an order of Court is an instrument — it refers to *all* memorials. In view of that section all orders of Court should be noted on the presentation book, otherwise there is no record of the time and date when they were presented. To ignore the provisions of section 78 with regard to orders of Court might lead to grave difficulties if an order of Court and a charge or transfer were presented on the same day at about the same time.

Accordingly I would dismiss this appeal, vary the order of Briggs J. as stated, and reserve the question of costs for further argument.

On further argument regarding costs, Mr. Hastings, for the third respondent, specifically asked for costs against the appellant but not against the first and second respondents. Mr. Ramani, for the appellant, in reply, did not ask that the first and second respondents should be made jointly liable with the appellant for the costs of the third respondent — he contented himself with submitting that since the judgment of the Court below had been slightly varied, though still upheld, the appellant should only pay to the third respondent one-half of the taxed costs.

Having taken a short time to consider this matter we reject the submission that the appellant should only be liable to pay the third respondent one-half of the taxed costs, and since the third respondent did not specifically ask for costs against the first and second respondents, we order that the third respondent's costs of this appeal shall be paid by the appellant.

Appeal dismissed.

KANDIAH v. PONNIAH PILLAY & ANOR.

[A. C. J. (Storr J.) January 17, 1949]

[Ipoh — Civil Appeal No. 13 of 1948]

Practice — Civil Procedure Code (Cap. 7), s. 299 — Application for release of property attached — Consent of both parties necessary before application can be heard by Court.

In this case an application was made for the release of certain property attached by the District Court in a Civil Suit. The decree-holder was called before the Court to show cause why the property should not be released. The decree-holder appeared before the Court and consented to the matter being dealt with under s. 299(ii) but the objector-appellant asked for an adjournment to call a witness. The learned District Judge refused postponement and proceeded to dispose of the matter. The objector appealed.

Held: as both parties had not consented to the matter being disposed of forthwith under s. 299(ii) of the Civil Procedure Code, the learned District Judge had no power to dispose of the matter as he did, and therefore his Order must be set aside.

CIVIL APPEAL.

S. M. Sharma for the appellant.

S. K. Das for the 1st respondent.

2nd respondent in person.

Storr J. : — This was an appeal from the Judgment and Order of the District Judge, Perak South, on an application under section 298, Civil Procedure Code, for the release of property attached in Telok Anson District Court Civil Suit No. 7 of 1948.

Mr. Sharma appeared for the appellant (objector) and Mr. S. K. Das for the 1st respondent (decree-holder). The 2nd respondent appeared in person but took no part in the argument.